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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 HENRI WETSELAAR, M.D.,

13 Defendant.

Case No. 2:11-cr-00347-KJD-CWH

**ORDER**

14 Presently before the Court is Defendant's Motion for Release Pending Appeal (#514).  
15 Plaintiff filed a response (#518) to which Defendant replied (#522).

16 **I. Background**

17 On March 23, 2017, a jury found Dr. Henri Wetselaar ("Defendant") guilty of multiple  
18 felony counts. On August 1, 2017, Defendant was sentenced. On August 4, 2017, Defendant  
19 filed a Notice of Appeal, and then an Amended Notice of Appeal on August 11, 2017. Defendant  
20 claims he is entitled to release pending appeal pursuant to Title 18 U.S.C. §§ 3143(b) and  
21 3142(g).

22 On June 2, 2017, the Court denied Defendant's Motion for Release Pending Sentencing  
23 (#490). Defendant failed to rebut the presumption that no condition or combination of conditions  
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1 would reasonably assure the safety of any other person or the community if he were to be  
 2 released. See 18 U.S.C. § 3142(e), (f); 18 U.S.C. § 3143(a)(2). Defendant's argument in his  
 3 Motion for Release Pending Appeal states Defendant "continues to meet[] the three criteria for  
 4 release pending appeal pursuant to § 3143(b) and § 3142(g) despite the Government's claims to  
 5 the contrary." However, Defendant fails to present any new argument beyond what he put forth  
 6 in his previously denied Motion for Release Pending Sentencing (#458).

## 7 II. Analysis

8 A defendant may be released pending appeal only where the court finds "by clear and  
 9 convincing evidence that the person is not likely to flee or pose a danger to the safety of any  
 10 other person or the community if released," and

11 that the appeal is not for the purpose of delay and raises a substantial question of  
 12 law or fact likely to result in: (i) reversal; (ii) an order for a new trial; (iii) a sentence  
 13 that does not include a term of imprisonment; or (iv) a reduced sentence to a term  
 of imprisonment less than the total of the time already served plus the expected  
 duration of the appeal process.

14 18 U.S.C. § 3143(b).

15 The factors the court considers when making the determination of whether a  
 16 person is "likely to flee or pose a danger to the safety" of the community are:

17 (1) the nature and circumstances of the offense charged, including whether the  
 18 offense is a crime of violence, a violation of section 1591, a Federal crime of  
 terrorism, or involves a minor victim or a controlled substance, firearm, explosive,  
 19 or destructive device; (2) the weight of the evidence against the person; (3) the  
 history of the person, including [] the person's character, physical and mental  
 condition, family ties, employment, financial resources, length of residency in the  
 20 community, community ties, past conduct, history relating to drug or alcohol abuse,  
 criminal history, and record concerning appearance at court proceedings . . . ; and  
 21 (4) the nature and seriousness of the danger to any person or the community that  
 would be posed by the person's release.

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 23 18 U.S.C. § 3142(g).  
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1 Defendant has failed to put forth any new argument that would change the calculus of  
2 this Court's previous evaluation of Defendant's Motion for Release Pending Sentencing. The  
3 Court's reasoning in its previous order denying Defendant's request for release relied on the  
4 same 18 U.S.C. § 3142(g) factors that control the present analysis. Defendant does not provide  
5 the Court with updated medical information, but instead reiterates his 2016 medical status, which  
6 the Court has already considered. Additionally, Defendant's condition did not appear to have  
7 deteriorated at the time of sentencing. He has presented no new information as to why the  
8 treatment he is receiving in custody is insufficient, or that there is a need for specialized  
9 treatment that is unavailable to him while he is in custody.

10 Further, Defendant has failed to show that his appeal raises any substantial question of  
11 law or fact likely to result in a reversal, new trial, or reduction of his sentence. Defendant states  
12 his appeal "will raise several substantial questions of fact and law related to his conviction"  
13 without more. Defendant presents no new questions of law or fact for the Court to consider.

14 Lastly, Defendant argues he can show "exceptional reasons" why detention would not be  
15 appropriate. 18 U.S.C. § 3145(c). "Only in truly unusual circumstances will a defendant whose  
16 offense is subject to the statutory provision be allowed to remain on bail pending appeal." U.S. v.  
17 Garcia, 340 F.3d 1013, 1022 (9th Cir. 2003). Such exceptional reasons include: (1) whether  
18 Defendant's crime was an aberration; (2) whether Defendant contributed significantly to society;  
19 (3) whether the nature of Defendant's crime is sufficiently dissimilar to others in the same  
20 category of crimes identified by the statute; (4) the length of Defendant's sentence (often a proxy  
21 for the seriousness of the crime committed); (5) whether there were circumstances that would  
22 "render the hardships of prison unusually harsh for a particular defendant;" (6) the benefit of an  
23 "uninterrupted course of treatment;" and (7) the effect of incarceration on Defendant's physical  
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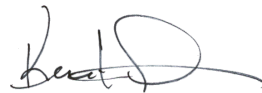
1 or mental health based on his characteristics. U.S. v. Garcia, 340 F.3d 1013, 1019-20 (9th Cir.  
2 2003). “Hardships that commonly result from imprisonment do not meet the standard.” Id. at  
3 1022. The general rule is that “conviction for a covered offense entails immediate incarceration.”  
4 Id.

5 However, this standard is inapplicable. 18 U.S.C. § 3145(c) would apply to an appeal of  
6 this Court’s determination that Defendant is subject to detention pursuant to 18 U.S.C. § 1343(b).  
7 Even still, addressing Defendant’s premature claim, a judicial officer hearing such an appeal will  
8 likely find no such exceptional reasons exist. Defendant has failed to prove both at the time of  
9 sentencing and appeal that his conditions merit release under the applicable statutes.  
10 Incarceration is the presumption, and there is no truly unusual deprivation or circumstance that  
11 Defendant faces beyond the natural hardships that result from imprisonment— the statutorily  
12 mandated consequences of Defendant’s actions must control.

13 IV. Conclusion

14 Accordingly, IT IS HEREBY ORDERED that Defendant’s Motion for Release Pending  
15 Appeal (#514) is **DENIED**.

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17 Dated this 12 day of September, 2017.

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20 Kent J. Dawson  
21 United States District Judge  
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